THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.711 of 1998

ORAL ORDER:

This Writ Petition is filed seeking a Mandamus declaring the action of the respondents in not paying to the petitioner the scale of pay attached to the post of Grade I Principal even though his services were confirmed as such on 20-4-1992, with effect from 23-10-1987 and also the action of the respondents in changing/altering the designation of the petitioner from Principal to 'Incharge Principal' as arbitrary and illegal and consequently to declare that the petitioner is entitled for the pay scale of Grade I Principal on par with Kendriya Vidyalaya Schools and direct the respondents to pay the scale of Grade I Principal to the petitioner from the date of his initial appointment as Principal with all consequential benefits including arrears of pay and allowances.

It is the case of the petitioner that he was appointed as Grade I Principal in the 1st respondent-School with effect from 29-9-1987, in pursuance of a notification issued by the Red Cross National School jointly run by the Red Cross and the 2nd respondent-University on 28-5-1987. He was put on the time scale of Rs.2000-3500. Now the grievance of the petitioner is that he is entitled for the salary on par with the Principal in Kendriya Vidyalaya Schools. It is also his case that the Teachers of the 1st respondent-School approached this Court by filing a Writ Petition in W.P.No.17910 of 1995, which was allowed by this Court on 19-3-1997 directing the respondents to implement the scale of pay of Rs.1400-2600 to the petitioners therein on par with the teachers in the Kendriya Vidyalaya Schools. The matter was further carried in appeal and a Division Bench of this Court by Judgment dated 24-6-1997 made in Writ Appeal No.455 of 1997 held that if there

is any higher pay to which the petitioners in the said Writ Petition are fitted in the scale of pay of Rs.1400-2600, they would be paid the difference within two months and shall thereafter be continuously paid new salary. According to the petitioner, in view of the said Judgments of this Court, he is also entitled for the pay scale attached to the post of Principal in the Secondary Schools of Kendriya Vidyalaya Sangathan.

A detailed counter affidavit has been filed on behalf of the respondents denying the allegations made by the petitioner. It is asserted that the petitioner was never appointed as Grade I Principal. He was appointed only as Grade II Principal and his post was not upgraded. The 2nd respondent was contemplating to create a post of Principal Grade I and fill up the same after following a transparent selection process. At no point of time, the respondents upgraded the petitioner for the post of Principal Grade I. With regard to the allegation that in spite of adopting the Kendriya Vidyalaya Sanghtan norms the Managing Committee did not pay the scale of pay applicable for the post of Principal Grade I, it is stated that the petitioner was never appointed for the post of Principal Grade I and as such, the question of placing him in the said pay scale does not arise. Further, the contention of the petitioner that if the School is upto 8th Class, the Principal will be graded as Grade II Principal and if the School is upto 10th Class, the Principal will be designated as Grade I is wholly misconceived and is not correct. For being appointed as Principal Grade I, one has to undergo the selection process; more so, when the qualifications for both the posts are distinct to each other and as such, there is no question of automatic upgradation of the post from Grade II to Grade I. Due to non-filling up of the post of Principal Grade I, petitioner was requested to discharge the duties of Principal Grade I

and that by itself does not confer the petitioner the post of Principal Grade I, to which post he never faced the selection process. The norms of Kendriya Vidyalaya Sangathan and the Judgments of this Court have no application to the case of the petitioner for the reason that in the case filed by some of the teachers, they had claimed pay scales corresponding to their designation, whereas the petitioner is seeking pay scale of the post to which he was never appointed. He was being paid the pay scale applicable to Principal Grade II.

Heard both sides.

Admittedly, the petitioner was appointed to the post of Principal in the scale of Rs.2000-3500. It appears, as on the date of appointment of the petitioner was Principal, Classes were there upto 8th standard, thereafter due to merger of another school, the classes were taken upto 10th standard it became a Secondary School. But the petitioner was being continued in the scale of Rs.2000-3500, which is, admittedly, applicable to the scale of Principal Grade II of Middle School. But, as soon as the School was upgraded in the year 1989, petitioner has been officiating as Grade I Principal till he was made to retire compulsorily in the year 2005 (during the pendency of the Writ Petition). In fact, the Management had passed a resolution for sanction of Grade I Principal post and the committee resolved to approach the University Grants Commission for upgradation of the existing Principal Grade II post to Principal Grade I post. What happened to those proceedings dated 2-11-2002 is not known. In the counter, the respondents have categorically admitted that the petitioner was discharging the duties of Grade I Principal, but that itself does not confer him the post of Principal Grade I. In fact, petitioner is not claiming the post of Principal Grade I. What all he is claiming is that he is entitled for salary in Principal Grade I post since he has officiated

as Grade I Principal of the School, which was not considered by the respondents saying that it requires some approval or selection etc. But, since it is an admitted fact that the petitioner has officiated and attended to the duties of Principal Grade I, I am of the considered view that he is entitled for the salary attached to the post of Principal Grade I from the year 1989 till July,2005. Further, in paragraph-7 of the counter, it is also admitted that the petitioner whose substantial appointment was to the post of Principal Grade II cannot claim any vested right for being appointed as Principal Grade I without even undergoing the selection process. In any event, petitioner was given senior scale i.e. Principal Grade I with effect from 23-10-1999, which is the date of completion of 12 years of service as Principal Grade II. Under those circumstances, petitioner is not only entitled for the regular pay scale from the date of his officiating the post of Grade I Principal (Secondary School) but also entitled for the regular scale with effect from 23-10-1999. But, according to the petitioner, the pay scale attached to the post of Grade I Principal was never extended to him till he was made to retire compulsorily. Therefore, I am of the considered opinion that the petitioner is entitled for the pay scale attached to the post of Principal Grade I from the date of his officiating the post till he was made to retire compulsorily. Respondent No.2 shall calculate and settle the arrears of salary of the petitioner, within a period of two months from the date of receipt of a copy of this order.

Accordingly, the Writ Petition is disposed of. No order as to costs.

18-4-2007

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